

REMARKS

Claims 1, 53, 87, and 90 have been amended. Claims 1, 25, 28, 31, 53, 77, 80, 83, and 87-97 are pending in the instant application.

It is respectfully submitted that the present amendment presents no new issues or new matter and places this case in condition for allowance.

I. The Rejection of Claims 1, 25, 28, 31, and 91-95 under 35 U.S.C. § 112, Second Paragraph

Claims 1, 25, 28, 31, and 91-95 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite on the ground that the limitation "the biological substance" in lines 3-4 of claim 1 has insufficient antecedent basis.

Claim 1 has been amended to recite in part "the polypeptide".

For the foregoing reason, Applicants submit that the rejection is overcome under 35 U.S.C. § 112 and respectfully request reconsideration and withdrawal of the rejection.

II. The Rejection of Claims 1, 53, 87, 88, 89, 90, and 92-95 under 35 U.S.C. § 102(e)

Claims 1, 53, 87, 88, 89, 90, and 92-95 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,361,973. The Office Action stated:

US 6,361,973 does not disclose a subsequence of SEQ ID NO: 5 comprising at least one copy of SEQ ID NO: 70, nor does it disclose a hybrid promoter comprising a portion of SEQ ID NO: 3 and a portion of SEQ ID NO: 5, wherein at least one of the portions comprises at least one copy of SEQ ID NO: 70. However, it does disclose a method for producing a polypeptide comprising cultivating a fungal host cell that 'comprises one copy of a first nucleic acid sequence encoding the biological substance operably linked to a second nucleic acid sequence comprising a tandem promoter, and isolating the polypeptide, as well as an isolated promoter variant comprising a tandem promoter, which is what is being claimed.

This rejection is respectfully traversed.

Under the standard required for anticipation under 35 U.S.C. § 102, the cited prior art reference is required to disclose every element of the claimed invention. *Lewmar Marine Inc. v. Barient Inc.*, 3 USPQ2d 1766 (Fed. Cir. 1987).

U.S. Patent No. 6,361,973 discloses a *Fusarium venenatum* glucoamylase gene promoter sequence (SEQ ID NO: 1 of U.S. Patent No. 6,361,973). U.S. Patent No. 6,361,973 does not disclose the sequence CGGCGTAATTTTCGGCC (SEQ ID NO: 70 of the instant application). The promoter variant of the instant invention (SEQ ID NO: 5) comprises the

sequence CGGCGTAATTTTCGGCC. The instant claims provide that a subsequence of SEQ ID NO: 5 comprises at least one copy of the sequence CGGCGTAATTTTCGGCC and that the hybrid promoter or the tandem promoter comprises at least one copy of the sequence CGGCGTAATTTTCGGCC. Consequently, U.S. Patent No. 6,361,973 does not disclose every element of the claimed invention and, therefore, does not anticipate the claimed invention.

For the foregoing reasons, Applicants submit that the rejection is overcome under 35 U.S.C. § 102(e) and respectfully request reconsideration and withdrawal of the rejection.

III. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

Date: November 2, 2007

/Robert L. Starnes, Reg. #41324/
Robert L. Starnes, Ph.D.
Reg. No. 41,324
Novozymes, Inc.
1445 Drew Avenue
Davis, CA 95618
(530) 757-4715